

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JIMMY MITCHELL,

Plaintiff

V.

NO. 3:94CV88-S-D

BUDDY EAST, ET AL,

Defendants

O P I N I O N

Upon further consideration of the complaint and the files and records in this action, the court finds that an order dated August 23, 1994, entered by the magistrate judge, granted leave to proceed in forma pauperis, but directed that no process issue until further order of the court, and required plaintiff to amend his complaint within twenty (20) days by filing an attachment to the P-3 form. Plaintiff was warned that his failure to timely comply with the requirements of the order might lead to dismissal of his lawsuit.

Although more than 45 days have elapsed since that time, plaintiff has failed to communicate further with the court, either to inquire as to the status of his case or to attempt to comply with the court's August 23, 1994, order. It is obvious that plaintiff has lost interest in this lawsuit and has decided to abandon it.

Rule 41(b), Federal Rules of Civil Procedure, provides,
inter alia,

For failure of the plaintiff to prosecute
or to comply with these Rules or any
order of the court defendant may move for
dismissal of an action or of any claim
against him.

Even though the Rule speaks in terms of dismissal on
motion of a defendant, it is now settled that the court has the
inherent authority to dismiss sua sponte for want of prosecution.
Link v. Wabash Railroad, 370 U.S. 626 (1962); Lopez v. Aransas
County Independent School District, 570 F.2d 541, 544 (5th Cir.
1978). Rule 41(b) further provides, inter alia:

Unless the court in its order for
dismissal otherwise specifies, dismissal
under this subdivision and any dismissal
not provided for in this rule, other than
a dismissal for lack of jurisdiction, for
improper venue, or for failure to join a
party under Rule 19, operates as an
adjudication upon the merits.

Since the defendants have never been called upon to
respond to the plaintiff's pleading, and have never appeared in
this action, and since the court has never considered the merits of
plaintiff's claims, the court's order of dismissal should provide
that dismissal is without prejudice. Shaw v. Estelle, 542 F.2d 954
(5th Cir. 1976).

A final judgment in accordance with this opinion will be
entered.

THIS the day of , 1994.

CHIEF JUDGE